IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTY EIGHTH DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

And
THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION NO : 9412 of 1998

AND

WRIT PETITION NO.110 of 2005

WRIT PETITION NO : 9412 of 1998

Between:

V. Appala Swamy, Retired Principal,
Sharadha Nagar, Pendurthi, Visakhapatnam District.

..... PETITIONER

AND

1 The Government of Andhra Pradesh, represented by its Principal Secretary for Education (I.E-1), Secretariat Buildings, Hyderabad.
2 The Commissioner and Director of Intermediate Education, Government of Andhra Pradesh, Hyderabad.
3 The Regional Joint Director for Higher Education, Rajahmundry, East Godavari District.
4 The Collector and District Magistrate, Visakhapatnam District.
5 The Mandal Revenue Officer, Pendurthi, Visakhapatnam District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an appropriate order direction or a writ particularly one in the nature of Writ of Mandamus declaring that the memo No. 516/I.E-1/96-3 dated 21-10-1997 issued by

the First Respondent as arbitrary, illegal and without jurisdiction and violation of Articles 14, 16, 21 of Constitution of India apart from being violative of Fundamental Principles of natural justice.

Counsel for the Petitioner: MR.KOKA RAGHAVA RAO

Counsel for the Respondents: GP FOR SERVICES-I.

WRIT PETITION NO : 110 of 2005

Between:

V.Appala Swamy S/o.Appala Naidu, Retired Principal,
Sharda Nagar, Pendurthi,
Visakhapatnam District.

..... PETITIONER

AND

1 The Government of Andhra Pradesh, rep by its Principal Secretary for Education(IEI), Secretariat Buildings, Hyderabad.
2 The Commissioner and Director of Intermediate Education, Government of Andhra Pradesh, Hyderabad.
3 The Regional Joint Director of Higher Education, Rajahmundry, East Godavari District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an appropriate order direction or a writ more particularly one in the nature of a writ of Mandamus declaring that the order of Andhra Pradesh Administrative Tribunal at Hyderabad, dated 17.4.2003 in OA No.4866/2001 & C.A.No. 758/2001 is arbitrary, illegal and unsustainable and further declare that the latches on the part of the Government in not passing the final orders in pursuance of the proceedings initiated by the then Director of Intermediate Education, Andhra Pradesh, Hyderabad under Rule 19(2) of Andhra Pradesh Civil Services Classification Control and Appeal Rules1963 and the consequent charges framed on 18-7-1990, is violative of Articles 14,16 and Article 311 read with Article 27 of the Constitution of India and quash the said charge and direct the respondents to pay the full pension with entire arrears from 30-6-1992 the date of retirement of the petitioner till the date of payment together with interest at 18% for belated payment besides damages quantified at Rs.2 lakhs being damages for health hazard and other irretrievable injuries caused to the petitioner as a result of abnormal and inordinate delay of about 12 years in finalization and payment of pensionary benefits.

Counsel for the Petitioner: MR.KOKA RAGHAVA RAO

Counsel for the Respondents: GP FOR SERVICES I

The Court made the following:

ORAL ORDER: (per GB.J.)

WRIT PETITION NO.110 of 2005

The Writ Petition is filed assailing the orders passed by A.P. Administrative Tribunal (for brevity Tribunal) in O.A.No.4866 of 2001 and C.A.No.758 of 2001, dated 17.4.2003 as arbitrary and illegal and for consequential reliefs.

2. The matter has a long history. Therefore, we find it appropriate to refer some of the relevant events. During the relevant time the petitioner was working as Principal of Government Junior College, Kurupam. While so, he was issued with a charge sheet on 18.7.1990 alleging certain charges relating to discrepancies in the accounting system for the years 1984-85. Though the petitioner submitted his defence statement on 4.8.1990, no action was taken on it. In the meanwhile he retired from service on 30.6.1992 while he was working at Government Junior College, Pendurthi. When his pension was not settled, he filed O.A.No.992 of 1993 and the same was disposed of by the Tribunal on 18.3.1993 directing the authorities to consider the representation and pass appropriate orders. Consequent on the said proceedings, his pension was granted at Rs.390/- per month from 6.9.1994. Thereafter a show cause notice was issued on 21.10.1997 calling upon him to explain why 50% pension should not be withheld. To the said show cause notice, petitioner submitted an explanation on 20.11.1997. Since no orders were passed for a considerable length of time, he filed O.A.No.4866 of 2001. It is also to be noted that the Government passed orders on 21.10.1997 directing the Commissioner, Intermediate Education, to initiate recovery proceedings under Revenue Recovery Act. Challenging the said proceedings dated 21.10.1997, the petitioner directly filed Writ Petition No.9412 of 1998. However, initially we will consider only the Writ Petition No.110 of 2005. The learned Tribunal, after considering the matter, disposed of O.A.No.4866 of 2001 with C.A.No.758 of2001 with the following directions:

> "In the facts and circumstances of the case, it is found expedient to dispose of the O.A. with a direction to the official respondents to complete the disciplinary proceedings strictly as per rules, keeping the above observations in view, particularly the observation that the second report dated 18.3.93 can only be construed at best, as an Inspection report but not an enquiry report. However grave the irregularities committed by the applicant may be, and though there may be financial irregularities, the requirements of A.P.C.S. (CCA) Rules and Revised Pension Rules are to be fulfilled before imposing a major penalty on a serving or retired government employee. The applicant in the present case is a retired Government employee as on today, though the disciplinary proceedings was initiated while he was in service. The exercise of settling of the pensionary benefits of the applicant as per rules taking into consideration the out come of the disciplinary proceedings to be concluded as per rules, shall be completed within 3 months from the date of receipt of a copy of this order.
>
> The OA is disposed of accordingly. In view of the disposal of the OA as above, by merging the interim order dated 24.7.2001, the C.A. stands closed. No costs".

A perusal of the above order shows that the Tribunal held the second show cause notice as issued is invalid and accordingly set aside the same, but in the relief portion the Tribunal directed to initiate recovery proceedings against the petitioner and his pensionary benefits should be released on the out come of the disciplinary proceedings. Against the said order, the present Writ Petition has been filed.

3. The learned counsel for the petitioner submits that though the petitioner was attained the age of superannuation on 30.6.1992, so far his pension was not even fixed and it is being withheld for one ground or the other. He further submits that initially when the show cause notice was issued, though he submitted an explanation, no final orders were passed.

4. At the outset it is to be noted that when his pension was not fixed even after his retirement, the petitioner had approached the Tribunal by filing O.A.No.992 of 1993 and the said OA was disposed of directing the authorities to settle the pensionary benefits of the petitioner, if there are no impediments. Ultimately in 1997 when the orders were passed by the Government proposing to effect 50% pension cut, he also submitted his explanation, but even till today no final orders have been passed. This is the state of affairs in the Government and the difficulty experienced by a pensioner was given least preference in this regard. We have to make this comment in view of

the arduous experience faced by the petitioner. Nothing could have prevented the Government from passing appropriate orders within a reasonable time or within the time even granted by the Tribunal. But it appears that nothing was moved in any direction. Under these circumstances we are of the considered view that the Government should be prohibited from taking any further action in pursuance of the show cause notice dated 20.10.1997. Inasmuch as sufficient opportunity was given to the Government to pass appropriate orders, having failed to do so, it will not be appropriate for this Court again to grant further time and that would only add to the misery of the retired employee.

5. Though the learned Government Pleader for Services-I tried to convince this Court that the matter is pending with the Minister, we do not appreciate the said contention. When the show cause notice was issued in 1997, no orders were passed and there is no reason to say that the matter is still pending with the Minister for the last eight years. Under these circumstances, we hold that the Government is estopped from taking any further action in pursuance of the show cause notice dated 21.10.1997.

6. Accordingly the Writ Petition is disposed of directing the Government to release full pension to the petitioner from 1.7.1992 duly giving credit to the pension already paid to him. The pension, as directed above, shall be released to the petitioner within a period of two (02) months from the date of receipt of a copy of this order. The arrears of pension shall carry interest at the rate of 12% per annum from 1.7.1992 till date of payment.

Writ Petition No.9412/1998

7. Since we have set aside the show cause notice and the consequential proceedings of the Government dated 20.10.1997, initiation of proceedings under Revenue Recovery Act also falls to ground. The petitioner ought to have filed the OA before the Tribunal challenging the said proceedings, but without doing so, he directly approached this Court by filing this Writ Petition. Therefore, we hold that the Writ Petition itself is not maintainable. In any view of the matter that will not have any effect inasmuch as the show cause notice itself is quashed in the present order.

8. Accordingly the Writ Petition is dismissed. No costs.

9. The Regional Joint Director of Higher Education, Rajahmandry, East Godavari District-3rd respondent is present before this Court and his presence is dispensed with.

(G.BIKSHAPATHY, J.)

28th February, 2005.

(P.S.NARAYANA, J.)

SSR

..... REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 The Principal Secretary for Education (I.E-1), Government of Andhra Pradesh, Secretariat Buildings, Hyderabad.
2 The Commissioner and Director of Intermediate Education, Government of Andhra Pradesh, Hyderabad.
3 The Regional Joint Director for Higher Education, Rajahmundry, East Godavari District.
4 The Collector and District Magistrate, Visakhapatnam District.
5 The Mandal Revenue Officer, Pendurthi, Visakhapatnam District.

6 The Registrar, A.P. Administrative Tribunal, Hyderabad.

7 2 CCs to G.P. for Services-I, High Court of A.P. Hyderabad. (OUT)

8 2 CD copies

Form-NIC-OGS/WP{*KRD****}***